Communications Workers of America AFL-CIO, CLC 501 Third Street, N.W. Washington, D.C. 20001-2797 202/434-1100



May 15, 2012

BY ELECTRONIC FILING

Marlene H. Dortch, Secretary Federal Communications Commission 445 Twelfth Street, S.W. Washington, DC 20554

Re: Applications of Cellco Partnership d/b/a/ Verizon Wireless, SpectrumCo, LLC, and Cox TMI Wireless, LLC for Consent to Assign Wireless Licenses WT Docket No. 12-4

Dear Ms. Dortch:

The Communications Workers of America ("CWA") supports the Challenge to Confidentiality Designation submitted by Public Knowledge on May 9, 2012 ("PK Challenge"). The PK Challenge seeks to make public a small portion of the Joint Operating Entity ("JOE") Agreement that deals with the basic governance structure of JOE. This section of the JOE does not fall within the Commission's standards of confidentiality. Moreover, public access to this section of the JOE is essential to assess how the nation's largest wireless provider (Verizon Wireless) and the largest cable companies (Comcast, Time Warner, Cox, and Bright House Networks) aim to form a cartel-like joint operating entity that will harm the public interest in cross-platform competition, network investment, and job creation.

In light of the far-reaching impact of the proposed Transaction, it is essential that the Commission conduct its review in a manner that maximizes transparency. The Commission adopted the Protective Orders² to provide access to information the

¹ Challenge to Confidentiality Designation of Public Knowledge, In the Matter of Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC for Consent to Assign License and Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC for Consent to Assign Licenses, WT Docket No. 12-4, May 9, 2012 ("PK Challenge").

² Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC for Consent to Assign Licenses and Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC for Consent to Assign Licenses, Protective Order, WT Dkt. No. 12-4, DA 12-50 (Jan. 17, 2012) ("First Protective Order") and Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC for Consent to Assign Licenses and Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC for Consent to Assign Licenses, Second Protective Order, WT Dkt. No. 12-4, DA 12-51(Jan. 17, 2012) ("Second Protective Order" and collectively with First Protective Order, "Protective Orders").

Applicants' deemed proprietary or confidential in a way that balances "the right of the public to participate in this proceeding in a meaningful way" while also "protecting proprietary and confidential information from improper disclosure." The Commission must ensure that the Applicants do not abuse the Commission's rules by hiding non-confidential information from public review and scrutiny.

In this instant proceeding, the Applicants have repeatedly tried to keep crucial details about the Transaction hidden from public view. First, the Applicants provided heavily redacted versions of the commercial agreements to the Commission, precipitating numerous complaints from multiple outside parties⁵ including CWA,⁶ prompting the Commission to require the Applicants to re-submit the commercial agreements with some, although not all, portions of the agreements unredacted.⁷ Next, the Applicants' failed to respond to the Commission's request for additional information in a manner that was both timely and allowed the Commission and outside parties meaningful review of the documents,⁸ this time prompting the Commission to "stop the clock" in its review of the Transaction.⁹

In our initial Comments on this Transaction, CWA noted that since the Applicants defended the initial redactions in the commercial agreements with the claim that those redactions contained information regarding "pricing, compensation, and related provisions," then those sections of the agreements that were initially left unredacted should be made publicly available. ¹⁰ In the initial heavily redacted agreements provided to the Commission, the Applicants did NOT redact the sections of the JOE related to its governance structure.

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³ First Protective Order, \P 1; Second Protective Order, \P 1.

⁴ First Protective Order, \P 1; Second Protective Order, \P 1.

⁵ Letter from Susan Eid (DirectTV), Trey Hanbury (Sprint Nextel Corporation), Kathleen Ham (T-Mobile USA, Inc), S. Derek Turner (Free Press), Andrew Schwartzman (Media Access Project), Harold Feld (Public Knowledge), Ed Black (Computer and Communications Industry Association), Michael Calabrese (New America Foundation), Caressa D. Bennet (Rural Telecommunications Group, Inc), Rebecca Murphy Thompson (RCA – The Competitive Carriers Association) to Marlene Dortch, WT Docket No 12-4, March 6, 2012.

⁶ See CWA and IBEW Supplemental Comments, WT Docket No. 12-4, March 2, 2012; Letter of Monica S. Desai and Carly Didden, Counsel to CWA, to Marlene Dortch, WT Docket No. 12-4, March 7, 2012; Letter of Monica S. Desai, Counsel to CWA, to Marlene Dortch, WT Docket No. 12-4, Feb. 16, 2012.

⁷ Letter from Rick Kaplan to Michael Samsock, Cellco Partnership, WT Docket No. 12-4, March 8, 2012 and Letter from Rick Kaplan to Lynn Charytan, Comcast Corporation, WT Docket No. 12-4, March 8, 2012.

⁸ See Letter of Monica S. Desai, Counsel to CWA, to Marlene Dortch, WT Docket No. 12-4, April 30, 2012; Letter of Monica S. Desai, Counsel to CWA, to Marlene Dortch, WT Docket No. 12-4, April 20, 2012; Letter of William Wiltshire (DirecTV), Patrick L. Morse (FairPoint), S. Derek Turner (Free Press), Andrew Schwartzman (Media Access Project), Harold Feld (Public Knowledge), Michael Calabrese (New America Foundation), Caressa D. Bennet (Rural Telecommunications Group, Inc), Michael Lazarus (Counsel for RCA), Antoinette Cook Bush (Counsel for Sprint Nextel) to Marlene Dortch, WT Docket No 12-4, April 24, 2012.

⁹ Letter from Rick Kaplan to Lynn Charytan (Comcast), David Don (SpectrumCo), Michael Samsock (Cellco Partnership), Steven Teplitz (Time Warner), Cody Harrison (Bright House Networks), and Jennifer Hightower (Cox), WT Docket No. 12-4, May 1, 2012.

¹⁰ CWA Comments, pp. 23-24.

The information about the JOE governance structure do not constitute trade secrets or commercially confidential information. Similarly, the information about the JOE governance structure cannot be used by competitors to leverage information that would competitively harm the Applicants. Most significant, the sections of the JOE related to its governance structure provide essential information so that the public can evaluate in a meaningful way the extent to which the Applicants have joined together to build a competitive fortress to fend off all other competitors. Applicants have attempted to describe the impact of the JOE as minimal. The public will come to a different conclusion when it is allowed to evaluate the full information. It is critical that this information be fully exposed to the public in order to shed light on the extensive anti-competitive impact of this agreement, which cannot be remedied without conditions.

This Commission has repeatedly noted the importance of full transparency in the conduct of Commission business. The Commission should not allow the Applicants to rest simply on their own assertions regarding what should and should not be made available to the public. Applicants are not permitted to abuse Commission process by hiding behind hollow labels of "confidential" and "proprietary" to keep relevant details of this Transaction from public view. The ability of the public meaningfully to review this Transaction, combined with this Commission's commitment to full transparency, require that this information be made fully available to the public.

Respectfully Submitted,

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¹¹ PK Challenge, 12 ("The U.S. Court of Appeals for the District of Columbia defines a 'trade secret' for purposes of FOIA Exemption 4 as 'a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end o product of either innovation or substantial effort," with a 'direct relationship between the information at issue and the productive process."")

¹² *Id.*, 14-15.

¹³ Reply Comments of the Communications Workers of America and International Brotherhood of Electrical Workers, WT Docket No. 12-4, i.

cc: Adam Krinsky, Counsel to Cellco Partnership d/b/a Verizon Wireless

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